

## Article 5. Regulating Off-Road Vehicles

Sec. 17-120. Policy. The state legislature has found and declared that:

- (1) excessive noise is a serious hazard to the health, welfare and quality of life of residents of the state;
- (2) exposure to certain levels of noise can result in physiological, psychological and economic damage;
- (3) a substantial body of science and technology exists by which excessive noise may be abated;
- (4) the primary responsibility for control of noise rests with the state and the political subdivisions thereof; and
- (5) each person has a right to an environment free from noise that may jeopardize his or her health, safety or welfare.

The town council adopts these findings and policy statement.

In addition to the noise emitted from off-road vehicles, an excessive amount of dust and fumes may be released into the air by the use of off-road vehicles which may likewise present a significant threat to the health, welfare and quality of life of residents, including their enjoyment of their property.

This article is intended to protect, preserve and promote the health, safety, welfare and quality of life of the residents of the town through the regulation of noise, disturbance, and inconvenience caused by the use of off-road vehicles as defined herein. (Ord. 5-10, 10-19-2010)

Sec. 17-124. Operational restrictions.

- a) Proximity to Adjoining Land: No person shall operate an ORV less than twenty five (25) feet from the adjoining property line unless such person owns the abutting property or has written permission from the owner of such abutting property (which written permission must be with the operator at all times).

b) Proximity to Public Road: No person shall operate an ORV within twenty five (25) feet of a public road unless the operator is lawfully entering such road for travel or lawfully crossing such road;

c) Hours and Duration of Operation: The operation of any ORV within two hundred and fifty (250) feet of any residential dwelling is hereby prohibited before 10:00 a.m. and after 8:00 p.m., Monday through Saturday, and before 9:00 a.m. and after 6:00 p.m. on Sunday. During the aforesaid hours, the operation of any ORV shall be limited to no more than three (3) hours total per day.

d) Limitation on Number of Off-Road Vehicles: No more than two (2) ORVs shall be operated at the same time.

#### Sec. 17-125. Noise restrictions.

a) Noise Restrictions: Municipal officers enforcing this article shall make reference to the regulations of the state department of motor vehicles, § 14-80a-1, et seq. entitled "Maximum Permissible Noise Levels for Vehicles." Measurement of noise levels shall be done in a manner consistent with the standards and procedures set forth in these regulations promulgated by the department of motor vehicles. Noise emissions from an ORV when measured with a sound level measuring microphone located fifty (50) feet from the ORV shall not exceed eighty (80) dB(A) at any time or under any condition of surface grade, vehicle load, acceleration or deceleration, or at any speed or rpm. In addition, noise emissions from an ORV may not exceed ninety-nine (99) dB(A) at a distance of twenty (20) inches at idle.

b) Mufflers: Each ORV operated by an internal combustion engine shall be provided with muffler(s) designed to prevent excessive, unusual or unnecessary exhaust noise. Each muffler shall be maintained by the vehicle owner or operator in good working order and in constant operation.

No person, including an ORV dealer or repairer, shall install or use upon said vehicle a muffler lacking interior baffle plates or other effective muffling devices, a gutted muffler, a muffler cutout, a straight exhaust, or any other mechanical device which will amplify the noise emitted by such vehicle.

c) No person shall operate or cause to be operated any off-road vehicle which is modified, altered, broken, or in disrepair so as to emit excessive, unreasonably loud, or offensive levels of noise.

Sec. 17-127. Enforcement. The police department is charged with enforcing the provisions of this article. ~~With respect to privately owned land no police officer shall initiate an investigation, or attempt to enforce or issue a summons to enforce this article, except upon complaint.~~ Upon receipt of a complaint of, or upon observation of a possible violation of this article by the police department or other department of the town, the police department shall initiate an investigation and if it is determined that a violation exists, it shall attempt to enforce or issue a summons to enforce this article. Any anonymous complaint received shall be independently verified. The chief of police may develop regulations or procedures consistent with this article for the enforcement thereof, including but not limited to the metering procedures and training of officers.

Sec. 17-130. Relation to nuisance and other laws.

a) *Public Nuisance.* No person shall operate or cause to be operated any off-road vehicle, upon any public property, any private residential property, or any private non-residential property within the Town of Berlin, in any manner, which would cause nuisance, annoyance, alarm, or harassment of any kind to any person(s) or which would expose any person to danger or injury. Nothing in this article shall be construed as authorizing or legalizing the creation or maintenance of a nuisance, and compliance with this article is not a bar to a claim of nuisance, or any other private cause of action, by any person. A violation of this article shall not be deemed to create a nuisance per se.

b) *Private Nuisance.* Compliance with this Article is not a bar to a claim of private nuisance, or any other private cause of action, by any person.

c) The provisions of this article shall not be construed to prevent the enforcement of other ordinances, regulations, or statutes that prescribe other standards for the type of noise or conduct involved.